

STATE OF MICHIGAN
COURT OF APPEALS

JUDITH WHITE,

Plaintiff-Appellant,

v

NEW DIRECTIONS CENTER FOR CHRISTIAN
COUNSELING and JANET HANLEY,

Defendants-Appellees.

UNPUBLISHED

March 12, 1999

No. 204404

Wayne Circuit Court

LC No. 96-618835 NM

Before: O'Connell, P.J., and Gribbs and Talbot, JJ.

O'CONNELL, P.J. (concurring).

I agree with the majority's conclusion that plaintiff's allegations give rise to a valid cause of action in professional malpractice that survives the statutory abolition of a cause of action in alienation of affections. However, I feel that the majority opinion fails to address adequately the issue of damages, which, if this case proceeds to trial on remand, may pose special problems for the judge and jury.

If plaintiff recasts her allegations under the rubric of malpractice and goes on to prove her case on its merits, in light of the statutory limitations of MCL 600.2901; MSA 27A.2901, she may claim damages arising from malpractice only, not from any emotional suffering resulting purely from the loss of her husband's society, affections, or comfort.

Distinguishing plaintiff's compensable injuries arising from the alleged malpractice from those that are not compensable because they stem from an alienation of affections may prove difficult. In *Tunncliffe v Bay Cities Consolidated R Co*, 102 Mich 624, 629-630; 61 NW 11 (1894), our Supreme Court held that where a plaintiff's injury takes the form of a miscarriage, her mental suffering from the miscarriage itself is compensable, but her grief for her lost fetus is not. Similarly, in this case plaintiff's injuries stemming directly from her counselor's alleged malpractice, if proved, are compensable, but plaintiff's grief or sorrow from the loss of her husband's company, and from the need to face life as an unmarried person, are not.

Assuming this case proceeds to the jury on remand, it will be the trial court's task to fashion an instruction that will enable the jury to distinguish between compensable and noncompensable damages.

I part from the majority opinion only in that I would provide the court with some guidance for this purpose.

/s/ Peter D. O'Connell